

Message Text

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LIMDIS

FOLLOWING REPEAT GEORGETOWN 2257 ACTION SECSTATE DTD 31 DEC

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LIMDIS

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TAGS: EINV, EMIN, GY

SUBJECT: TEXT OF AGREEMENT AMONG GOG, OPIC, AND REYNOLDS ON
NATIONALIZATION OF REYNOLDS GUYANA MINES, LTD.

1. FOLLOWING IS TEXT OF AGREEMENT SIGNED BY GOG (JACK),
REYNOLDS (ROBERTS), OPIC (GOLDBERG AND HUNT) AT ELEVEN-
THIRTY THIS MORNING LOCAL TIME (12/31):

QUOTE

AN AGREEMENT MADE AND ENTERED INTO BY-

(I) THE GOVT OF GUYANA ("THE GOVT");

(88) REYNOLDS METALS COMPANY ("REYNOLDS");

(III) REYNOLDS GUYANA MINES LTD. ("REYNOLDS-GUYANA"); AND

(IV) THE OVERSEAS PRIVATE INVESTMENT CORPORATION ("OPIC"),

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AN AGENCY OF THE UNITED STATES GOVERNMENT.

WHEREAS THE COOPERATIVE REPUBLIC OF GUYANA ("GUYANA") INTENDS
TO NATIONALIZE THE ASSETS IN GUYANA OF REYNOLDS-GUYANA, A

WHOLLY OWNED SUBSIDIARY OF REYNOLDS UNDER AUTHORITY OF THE BAUXITE NATIONALIZATION ACT OF 1971 (THE "ACT");

WHEREAS OPIC HAS INSURED THE REYNOLDS INVESTMENT AND WILL BE SUBROGATED TO THE RIGHTS OF REYNOLDS WITH RESPECT TO COMPENSATION;

WHEREAS THE ACT PROVIDES THAT COMPENSATION PAYABLE BY THE STATE FOR THE NATIONALIZED ASSETS MAY BE DETERMINED AND PAID IN A MANNER AGREED IN WRITING BETWEEN THE STATE AND REYNOLDS-GUYANA;

WHEREAS THE PARTIES WISH TO PRVIDE BY AGREEMENT FOR THE COMPENSATION TO BE PAID ON ACCOUNT OF SUCH NATIONALIZATION AND FOR THE ADJUSTMENT OF RELATED MATTERS AS HEREIN SET FORTH;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. NATIONALIZATION: (A) GUYANA WILL ACQUIRE ALL REYNOLDS-GUYANA ASSETS EXISTINGIN GUYANA ON VESTING DAY. UPON THE COMPLETION OF THE ANNUAL AUDIT FOR THE YEAR 1974, REYNOLDS-GUYANA WILL FURNISH TO THE GOVT A SET OF AUDITED ANNUAL ACCOUNTS; FOR THE YEAR ENDED DECEMBER 31, 1974, TOGETHER WITH SUPPORTING DATA FOR THE ASSET ACCOUNTS, SUCH AS COMPUTER LISTINGS, PREPARED IN THE ORDINARY COURSES OF BUSINESS. IN ADDITION, REYNOLDS-GUYANA SNULL FURNISH TO THE GOVT ALL RECORDS, OR COPIES THEREOF, RELATING TO SUCH ASSETS, INCLUDING GEOLOGICAL AND STRIPPING DATA. (B) GUYANA SHALL SUCCEED TO AND ASSUME SUCH PURCHASE COMMITMENTS OF REYNOLDS-GUYANA TO GUYANA RESIDENTS AS ARE FINALLY DECIDED BY THE GOVT WITHIN FOURTEEN DAYS OF THE PRESENTATION BY REYNOLDS-GUYANA TO THE GOVT OF A LIST OF SUCH LIABILITIES AND UP TO A LIMIT OF US DOLS 300,000, PROVIDED THAT THE SAID LIST SHALL BE PRESENTED WITHIN TEN DAYS OF THE SIGNING OF THIS AGREEMENT. IF ANY SUCH COMMITMENTS ARE NOT ASSUMED BY THE GOVT, REYNOLDS MAY AT ITS ELECTION, COMPLETE THE PURCHASE OF THE GOODS INVOLVED AND REMOVE THEM FROM GUYANA. LIABILITY IN RESPECT OF CONTINUING EMPLOYEE BENEFITS SUCH AS ACCRUED VACATION PAY WILL BE ASSUMED BY THE GOVT AFTER THE VESTING DATE.

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(C) THE GOVT SHALL CARRY OUT THE PURCHASE COMMITMENTS OF REYNOLDS-GUYANA TO NON-GUYANA SUPPLIERS AS PREVIOUSLY NOTIFIED BY TELEX FROM REYNOLDS TO THE MINISTRY OF ENERGY AND NATURAL RESOURCES.

(D) ALL RIGHTS, OBLIGATIONS AND LIABILITIES UNDER THE FEBRUARY 16, 1965 AGREEMENT BETWEEN GUYANA AND REYNOLDS SHALL TERMINATE AS OF THE VESTING DATE AND NO CLAIM SHALL BE MADE WITH RESPECT TO THE SAID AGREEMENT EXCEPT AS BASED ON THE INSTANT AGREEMENT.

(E) THE DESIGNATED VESTING DATE IS JANUARY 1, 1975, AND THE CLOSING DATE SHALL BE NOT LATER THAN JANUARY 31, 1975.

2. COMPENSATION: THE AMOUNT OF COMPENSATION FOR THE NATIONALIZED ASSETS SHALL BE THE SUM OF US DOLS 14.5 MILLION BEING THE AGREED

WRITTEN DOWN BOOK VALUE OF SUCH ASSETS AS ON DECEMBER 31, 1974. AGAINST THAT SUM SHALL BE CREDITED THE NET OF THE SUMS REQUIRED TO BE CREDITED UNDER CLAUSES 6 AND 8 BELOW, LEAVING AN ADJUSTED COMPENSATION AMOUNT OF US DOLS 10.0 MILLION. THE ADJUSTED COMPENSATION AMOUNT AND ANY INTEREST THEREON SHALL BE PAID BY THE GOVT TO OPIC IN THE UNITED STATES IN U.S. DOLLARS WITHOUT DEDUCTION OR LIABILITY FOR ANY TAXES OR LEVIES IN GUYANA.

3. TERMS OF PAYMENT: THE GOVT SHALL PAY THE ADJUSTED COMPENSATION AMOUNT OF US DOLS 10.0 MILLION AT 1 1/2 PERCENT INTEEST IN THIRTEEN AHNUAL INSTALLMENTS COMMENCING JANUARY 2, 1976, THE AMOUNTS OF THE INSTALLMENTS TO BE AS SET FORTH IN THE ATTACHED SCHEDULE. ALL PAYMENTS SHALL BE MADE BY DEPOSIT OF THE REQUISITE AMOUNT OF U.S. DOLLARS TO THE ACCOUNT OF OPIC IN SUCH UNITED STATES BANK AS OPIC SHALL DESIGNATE BY REASONABLE NOTICE TO THE GOVT.

4. RIGHT TO ANTICIPATE PAYMENTS: NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE GOVT SHALL HAVE THE RIGHT TO ANTICIPATE ANY PAYMENT REFERRED TO IN CLAUSE 3 ABOVE ANDIN THEEVENT OF ANY PAYMENT BEING SO ANTICIPATED THE PARTIES BIND AND OBLIGE THEMSELVES TO RE-NEGOTIATE THE ORDER AND MAGNITUDE OF PAYMENTS REMAINING TO BE MADE UNDER THAT CLAUSE SO AS TO REFLECT THE EXTENT TO WHICH PAYMENT HAS BEEN ANTICIPATED, PROVIDED THE PAYMENTS SO RE-NEGOTIATED SHALL HAVE, AT THE TIME OF ANTICIPATION, A PRESENT VALUE, COMPUTED AT 8 1/2 PERCENT INTEREST, NO LESS THAN THE PRESENT VALUE OF THE REMAINING INSTALLMENTS AS SCHEDULED WITHOUT RE-NEGOTIATION.

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5. NOTES: THE GOVT SHALL ISSUE NOTES EVIDENCING THE PAYMENT OBLI- GATION. SAID NOTES SHALL BE IN NEGOTIABLE FORM, FOLLOW THE GENERAL PATTERN OF NOTES GIVEN BY GUYANESE STATE CORPORATIONS IN THEIR EXTERNAL FINANCING TRANSACTIONS, AND SHALL BE ISSUED OR REPLACED IN DENOMINATIONS OF US DOLS 100,000 OR MORE AS REQUESTED BY OPIC.

6. PRODUCTION LEVY: OPIC SHALL CREDIT TO THE GOVT AT THE CLOSING DATE THE SUM OF US DOLS 6.5 MILLION IN FULL DISCHARGE OF ALL LIABILITY OF REYNOLDS-GUYANA WITH RESPECT TO PRODUCTION LEVY DUE UNDER THE BAUXITE (PRODUCTION LEVY) ACT OF 1974, NET OF A CREDIT FOR US DOLS 400,000 ALREADYPAID BY REYNOLDS-GUYANA ON ACCOUNT OF GUYANA INCOME TAX FOR 1974.

7. PENSIONS: ON CLOSING DATE, REYNOLDS SHALL PAY INTO A GUYANA PENSION TRUST ACCOUNT TO BE ESTABLISHED IN THE GUYANA NATIONAL COOPERATIVE BANK, THE AMOUNT OF US DOLS 574,000 (OF WHICH NO LESS THAN US DOLS 559,000 SHALL BE FROM FUNDS NOT NOW ON DEPOSIT IN GUYANA) IN DISCHARGE OF ALL CLAIMS AND OBLIGATIONS IN CONNECTION WITH PAYMENT OF PENSIONS, SEVERANCE PAY,AND OTHER AMOUNTS DUE EMPLOYEES. ON CLOSING DATE,THE GOVT SHALL CAUSE US DOLS 376,000

TO BE TRANSFERRED FROM THE ESCROW ACCOUNT TO SUCH TRUST AND SHALL BE CREDITED FROM THE SAID ACCOUNT WITH THE SUM OF US DOLS 40,000 IN RESPECT OF AMOUNTS PAID BY THE GOVT TO WORKERS WHO RECEIVED RETRENCHMENT NOTICES AND WHO WILL BE TREATED AS HAVING BEEN ON FULL-PAID LEAVE. THE GOVT SHALL EXECUTE AND DELIVER TO REYNOLDS IN APPROPRIATE FORM A GENERAL RELEASE AND AGREEMENT TO HOLD HARMLESS AND INDEMNIFY REYNOLDS AND REYNOLDS-GUYANA FOR ALL SUCH CLAIMS.

8. PRIOR YEARS' TAXES: FROM THE SUM OF US DOLS 2.7 MILLION (ESCROW ACCOUNT) LODGED BY REYNOLDS-GUYANA IN CONNECTION WITH ITS PENDING TAX APPEALS THE GOVT WILL REMIT AND CREDIT TO REYNOLDS-GUYANA US DOLS 2.0 MILLION AT THE CLOSING DATE.

9. SUBROGATION AND ASSIGNMENT OF RIGHTS: AT THE CLOSING DATE OPIC WILL BE SUBROGATED TO REYNOLDS AND WILL SUCCEED TO ALL RIGHTS OF REYNOLDS AND REYNOLDS-GUYANA HEREUNDER. THE RIGHTS OF UNCLASSIFIED

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OPIC HEREUNDER MAY BE ASSIGNED IN WHOLE OR IN PART AT ANY TIME.

10. CLAIMS AND TAXES: THE CLOSING OF THIS AGREEMENT AT THE CLOSING DATE SHALL DISCHARGE ALL CLAIMS OF WHATEVER NATURE BY OR BETWEEN OPIC, REYNOLDS AND REYNOLDS-GUYANA ON THE ONE HAND, AND THE GOVT ON THE OTHER, THEIR SUCCESSORS OR ASSIGNS IN ANY WAY RELATING TO THE NATIONALIZATION, TAXES, LEVIES OR OTHER ASSESSMENTS OF ANY CHARACTER WITH RESPECT TO THE OPERATIONS OF REYNOLDS OR REYNOLDS-GUYANA EXCEPT FOR CLAIMS BASED UPON THE TERMS OF THIS AGREEMENT AND ALL PENDING PROCEEDINGS BETWEEN THE GOVT AND REYNOLDS AND/OR REYNOLDS-GUYANA SHALL BE FORTHWITH DISCONTINUED. NO STAMP DUTY OR OTHER TAX SHALL BE LEVIED ON THE TRANSFER OF ASSETS TO THE GOVT. AFTER THE DATE HEREOF NEITHER REYNOLDS NOR REYNOLDS-GUYANA SHALL BE SUBJECT TO ANY TAXES, LEVIES, DUTIES, IMPOSTS OR OTHER ASSESSMENTS.

11. DISPUTES: ANY DISPUTES ARISING HEREUNDER WHICH CANNOT BE SETTLED BY THE PARTIES SHALL BE SUBMITTED TO ARBITRATION IN ACCORDANCE WITH THE RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE. THE AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF ENGLAND AND THE ARBITRATION SHALL TAKE PLACE AT GEORGETOWN, GUYANA.

SIGNED IN QUADRUPLICATE AT GEORGETOWN, GUYANA, THIS 31ST DAY OF DECEMBER, 1974:

SCHEDULE OF INSTALLMENT PAYMENTS

TO GIVE PRESENT VALUE OF US DOLS 10,000,000 ON JANUARY 2, 1975, COMPUTED AT 1.5 PERCENT

DUE DATE OF INSTALLMENT	AMOUNT (US DOLS)
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JANUARY 2, 1976	DOLS 400,000
JANUARY 2, 1977	600,000
JANUARY 2, 1978	800,000
JANUARY 2, 1979	1,000,000
JANUARY 2, 1980	1,300,000
JANUARY 2, 1981	2,130,000
JANUARY 2, 1982	2,200,000
JANUARY 2, 1983	2,270,000
JANUARY 2, 1984	2,360,000
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JANUARY 2, 1985	1,300,000
JANUARY 2, 1986	1,300,000
JANUARY 2, 1987	1,300,000
JANUARY 2, 1988	1,300,000

2. EMBASSY LEAVES TO DEPT'S DISCRETION DISTRIBUTION OF TEXT.
NOTE THAT AGREEMENT HAS NOT RPT NOT YET BEEN MADE PUBLIC IN GUYANA.
KREBS UNQTE INGERSOLL

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